DON G. CARPENTER

IBLA 86-175 Decided September 18, 1986

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting a portion of an oil and gas lease offer containing lands within a known geologic structure. W-92541.

Dismissed.

1. Appeals--Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Statement of Reasons

A statement of reasons for an appeal that does not point out affirmatively why the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. Conclusory allegations of error, standing alone, do not suffice to point out error.

APPEARANCES: Don G. Carpenter, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

On October 22, 1985, the Wyoming State Office, Bureau of Land Management, issued a decision rejecting 320 acres in sec. 7, S 1/2, T. 15 N., R. 91 W., sixth principal meridian, Carbon County, Wyoming, from appellant's offer to lease parcel WY-406, filed April 12, 1985, on the grounds that these lands were determined to be within an expansion of the Washakie Basin known geologic structure (KGS) on October 15, 1985. See 43 CFR 3112.5-2(b).

On November 14, 1986, appellant filed a notice of appeal including a statement of reasons. See 43 CFR 4.411(b). The statement of reasons states:

> As a certified petroleum geologist, I can say that there is absolutely no stratigraphic or structural basis by which the geologic setting of this oil and gas lease can be interpreted to be a field of known geologic structure.
>
> Withdrawal of the land from issuance is nothing more than an administrative fiat outside the realm of the law.

[1] Failure on appeal to point out affirmatively why the decision appealed from is in error may be treated in the same manner as an appeal in which no statement of reasons has been filed: the appeal may be dismissed. United States v. Reavely, 53 IBLA 320 (1981); United States v. Coppridge, 17 IBLA 323 (1974); United States v. Whittaker, 12 IBLA 279 (1973). Conclusory allegations of error, standing alone, do not suffice. United States v. De Fisher, 92 IBLA 226 (1986). The statement of reasons quoted above does not meet the requirements of the Board's rules requiring a statement of reasons because it does not adequately point out the basis for appellant's belief that the decision appealed from is in error. Accordingly, the appeal is subject to dismissal.

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Will A. Irwin
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge.

ADMINISTRATIVE JUDGE ARNESS DISSENTING:

I agree that on the record presented for review in this case appellant must be denied relief. I do not, however, agree that his statement of reasons is so far beyond the pale as to permit summary dismissal without discussion of the merits of his case.

It is true that appellant has misconceived his burden on appeal: he assumes that, because he is a petroleum geologist, he can match his expert opinion in his chosen field equally against that of the Bureau of Land Management's (BLM) experts which underlies the decision appealed from. This is simply not the law. The burden to show error in any BLM decision complained of is upon the appellant as the proponent of his own case. Cf. 5 U.S.C. § 556(d) (1982). To successfully show error in a BLM determination establishing a known geologic structure (KGS) requires more proof than a simple expression of disagreement, even if it is expert disagreement. See Evelyn D. Ruckstuhl, 85 IBLA 69 (1985). Appellant has, however, stated grounds for review which allege scientific error in the BLM decision of October 22, 1985. Thus, he asserts that the BLM determination that certain lands should be included within the Washakie Basin KGS is wrong because it is not based upon stratigraphic or structural data tending to show the land is presumptively productive of oil and gas.

It is also true that the October 22, 1985, BLM decision which announced the KGS determination to appellant was, like appellant's statement of reasons addressed to this Board, very brief. It simply states that, effective August 13, 1985, part of the lands in appellant's simultaneous oil and gas lease offer were included in a KGS, based upon an internal agency memorandum. The memorandum is not made part of the decision sent to appellant. It does, however, appear as part of the BLM case file in the record on appeal. As to the lands in appellant's lease application found to be within the KGS, the BLM decision announces that no lease will be issued to appellant. Like appellant's statement of reasons, therefore, BLM's decision does not disclose the underlying scientific base upon which the decision rests, although it does disclose that such a base does exist. While the decision is therefore minimally sufficient to establish the nature of the action taken and the reasons for it, it also leaves much unsaid.

In this situation, appellant's claim for relief must be denied not because he totally failed to articulate any basis for his appeal, but because he did not meet the burden of proof which he necessarily assumed when he decided to appeal the BLM action. Appellant could have demanded the details of BLM's case, and he could have submitted his own data establishing his case by proof of the proposition he espouses. He did neither. Appellant has alleged that error exists in the extension of the Washakie KGS to his application for lease, but he has not shown, by offering corroborating scientific data, that his contrary opinion is correct. He has failed to prove his case, but he has not failed to state it. Having challenged the KGS determination, he must prove that it is wrong. Leonard Lunning, 87 IBLA 123 (1985).

This is not, however, a case such as was presented in B. H. Northcutt, 75 IBLA 307 (1983) where the appellant neither alleged nor claimed any basis for relief. Nor is it like Bob G. Howell, 75 IBLA 113 (1983) where the appellant conceded he had not alleged error, but sought review for purposes of "investigation." Clearly, mere suspicion of the existence of error is an inadequate reason for appeal. Summary dismissal of a statement of reasons should be reserved for such rare cases as these. 1/

I believe this Board should avoid the initiation of a practice where administrative appeals before the Department are scrutinized for technical procedural defects in pleading, similar to the judicial practice which evolved under code pleading, where the failure to state a technical cause of action was fatal to a pleader's claim. In this case appellant's injury is the loss of part of a lease, which would have issued to him were it not for the KGS determination made by BLM. As the basis for his claim for relief, he has stated his own expert opinion of the nature of the geology which underlies the lands. He has not, however, supported his opinion with evidence sufficient to persuade this Board that his opinion is correct. In appeals from KGS determinations by the Department, an appellant has a difficult, but not totally impossible burden. To obtain relief, paradoxically, he must show that his oil and gas lease will probably be unproductive. Cf. Lloyd Chemical Sales, Inc., 82 IBLA 182 (1984).

Because an appellant is entitled to a reasoned explanation for the rejection of his claim for relief on the merits does not mean that a lengthy or unnecessarily complicated exegesis needs to be supplied by this Board. I agree that a summary disposition, briefly explaining why appellant has failed to show error, is properly issued in such cases as this. Such summary disposition should, however, reach the merits of the appeal, which are fairly raised by appellant's statement of reasons.

I would therefore deny appellant relief on the merits of his appeal, and affirm BLM, but would not summarily dismiss appellant's appeal because of perceived defects in his statement of reasons.

Franklin D. Arness
Administrative Judge

1/ For a recent example of a statement of reasons deemed sufficiently intelligible to warrant an opinion on the merits, see Arizona Real Estate Exchange, Inc., 94 IBLA ____ (1986).